

# **U.S. Department of Energy Environmental Management Site-Specific Advisory Board**

## **Interim Guidance**

**Prepared by  
Office of Public and Intergovernmental  
Accountability (EM-13)**

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# ENVIRONMENTAL MANAGEMENT SITE-SPECIFIC ADVISORY BOARD (EM SSAB) GUIDANCE

Office of Public and Intergovernmental Accountability (EM-13)

June 2006

The purpose of this document is to provide guidance regarding the operation of the Environmental Management Site-Specific Advisory Board (EM SSAB or Board). This updated guidance supersedes the EM Site-Specific Advisory Board Guidance issued in December 2003. It supplements the requirements of the Federal Advisory Committee Act of 1972, **5 U.S.C. Appendix 2 (FACA)**; the General Services Administration (GSA) implementing regulations, **41 CFR Subpart 102-3, (CFR)**; and the Department of Energy (DOE) Advisory Management Program Manual, **DOE M 510.1-1 (Manual)**, but does not replace these documents.

## **I. Background and Introduction**

In 1993, in response to the increasing need for public participation in the Department of Energy's (DOE) decisions, DOE participated in a national policy dialogue on federal facility environmental restoration decision-making and priority-setting issues. The Keystone Center, a non-profit environmental conflict management group, established a working dialogue among representatives of the federal government, Tribal governments, Native American organizations, and local citizen groups. The goal was to develop consensus policy recommendations aimed at improving the process by which federal facility environmental cleanup decisions are made, such that these decisions reflect the priorities and concerns of all stakeholders. It was recommended that federal agencies establish advisory boards to provide independent policy and technical advice to both regulated and regulating agencies with respect to key cleanup decisions.

In June 1994, the Office of Management and Budget (OMB) and GSA approved the Charter that established the EM SSAB under FACA. It is that under which local site-specific boards are organized. It was renewed in May 1996, 1998, 2000, 2002, 2004, and 2006.

In accordance with its charter, the EM SSAB exists to provide the Assistant Secretary for Environmental Management, the appropriate Site Manager(s), and any other DOE officials the Assistant Secretary shall designate, with information, advice and recommendations concerning issues affecting the EM Program at various sites. Specifically, at the request of the Assistant Secretary or the Site Managers, the Board may provide advice and recommendations concerning the following EM site-specific issues: clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long term stewardship; risk assessment and management;

and clean-up science and technology activities. The Board may also be asked to provide advice and recommendations on any other EM projects or issues.

Local EM SSAB Boards draw upon diverse community viewpoints to provide advice and recommendations to DOE. Some local Boards are associated with DOE Operations, Field or Area Offices for which EM is the landlord program, while other Boards are supported by Field site offices that are managed either by the Office of Science (SC), the National Nuclear Security Administration (NNSA), or the Office of Nuclear Energy (NE). However, in accordance with the EM SSAB Charter, the mission and operation of any given local Board is unaltered whether the landlord is EM, SC, NNSA, or NE.

The goal of the EM SSAB is to more directly involve stakeholders in EM planning and decision-making processes for the nuclear weapons complex cleanup. DOE has various means of involving the public in its planning and decision-making processes; the EM SSAB is only one component of EM's public participation program, and is not intended to be an exclusive means of public participation. It is the policy of DOE and EM to conduct its programs in an open and responsive manner, thereby, encouraging and providing the opportunity for public participation in its planning and decision-making processes.

## **II. Roles and Responsibilities**

### ***II.a. DOE Headquarters***

#### **Office of the Secretary of Energy:**

**FACA and Title 41 Code of Federal Regulations (CFR) require the DOE Secretary to:**

- Comply with FACA and the CFR. **FACA § 8; CFR § 102-3.105(a)**
- Issue administrative guidelines and management controls. **FACA § 8(a); CFR § 102-3.105(b)**
- Designate a Committee Management Officer (CMO). **FACA § 8(b); CFR § 102-3.105(c).**
- Ensure advisory board meetings are open to the public unless a written determination for closing any meeting is provided. **CFR § 102-3.105(d)**
- Review, at least annually, the need to continue the advisory committee. **CFR § 102-3.105(e)**
- Determine if compensation for members, staff, experts, and consultants is justified. **CFR § 102-3.105(f)**
- Develop procedures to assure that advice and recommendations of the advisory committee is the result of independent judgment. **CFR § 102-3.105(g)**
- Assure that the interests and affiliations of advisory board members conform with applicable conflict of interest statutes and regulations. **CFR § 102-3.105(h)**
- Designate a Designated Federal Official (DFO) for each advisory committee. **CFR § 102-3.105(i)**
- Provide opportunity for reasonable public participation in advisory committee activities. **CFR § 102-3.105(j)**

#### **Office of the Executive Secretariat:**

Committee Management Officer (CMO) (MA-70):

**FACA and Title 41 Code of Federal Regulations (CFR) require the Executive Secretariat to carry out all duties designated by the Secretary, including:**

- Ensure compliance with FACA. **FACA § 8(b)(1); CFR § 102-3.115**
- Ensure that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes.
- Renew or terminate the EMSSAB Charter as appropriate. Annually, review the need to continue the SSAB. **CFR §§ 102-3.115**
- Process Federal Register notices for local EMSSAB public meetings. **FACA §§ 8(b)(1), 10(a)(2); CFR §§ 102-3.115, 102-3.150(a).** (See Section III.a.2 of this Guidance for further parameters.)

**The Manual requires:**

- Manage and maintain a library of EM SSAB documentation, including EM SSAB annual reports, work plans, recommendations and responses, meeting minutes, and membership information. **Manual § VII.2**

**Assistant Secretary for Environmental Management (EM-1):**

**FACA and Title 41 Code of Federal Regulations (CFR) require EM-1 to:**

- Ensure compliance with **FACA and CFR**
  - Officially appoint Board members.
- (In limited cases, this authority has been delegated to the Field under Section III.c.3 of this Guidance)

**Office of Regulatory Compliance (EM-10)**

**Office of Public and Intergovernmental Accountability (EM-13):**

(Designated Federal Officer) (DFO):

**FACA and Title 41 Code of Federal Regulations (CFR) require EM-10 and EM-13 to:**

- Manage and maintain a library of EM SSAB documentation, including annual reports, work plans, recommendations and responses, meeting minutes, and membership information. **FACA §§ 10(b), 12(a)**
- Each Federal advisory board is required to have a DFO, in this case a DOE employee, who works closely with the Board. **FACA § 10 (f); CFR § 102-3.120**

**The Manual requires:**

- Prepare *Federal Register* notices for local EM SSAB public meetings. **Manual § I.6.i**
- Ensure that conflict of interest regulations are followed. **Manual § I.6.i**
- Prepare, process, and obtain approval of EM SSAB new/renewal membership packages. **Manual § I.6.i**
- Prepare, process, and obtain approval of EM SSAB Charter renewal. **Manual § I.6.i**
- Maintain records and documentation. **Manual § I.6.i**

**To enhance compliance with FACA, CFR and DOE policy, EM's policy is to:**

- Delegate to local DOE employees the responsibility to serve as Deputy Designated Federal Officials (DDFOs) for local Boards. (A site may have more than one DDFO appointed at one time).
- Inform the EM SSAB members of Departmental processes, programs, projects, and activities directly affecting the Board's mission and purpose.

**Office of the Assistant General Counsel for General Law (GC-77)**

- Provide legal support for EM SSAB Charter renewal, Charter termination, official appointments of Board members, and policy issues. **Manual § I.6.g**

**EM Program Offices** (as appropriate):

**To enhance compliance with FACA, CFR and DOE policy, EM directs:**

- Respond in a timely fashion to EM SSAB recommendations, as appropriate.

## ***II.b. DOE Operations, Field, Site, and Area Offices***

Although DOE Headquarters, through the Assistant Secretary for EM and the CMO, is responsible for the EM SSAB, DOE Operations, Field and Area Offices (the Field) are accountable to DOE-HQ for local Board activities and act for EM at the local level.

**FACA and Title 41 Code of Federal Regulations (CFR) require:**

- Ensure required records on Board costs and membership are maintained, as each agency needs to keep records that will fully disclose the disposition of any funds at the disposal of the Board. **FACA § 7(b)&(c), 12(a); CFR § 102-3.175(b); Manual § VII**
- Make records available to interested members of the public. **CFR § 102-3.170; Manual § VII.4**
- Recommend, to the DFO, a senior DOE official (or officials) to serve as the Deputy Designated Federal Officer (DDFO) for the local Board. **FACA § 10(e); CFR § 102-3.120**
- Provide advice, assistance, and guidance to the local EM SSAB, regarding its annual scope of work and work plan to improve the Board's performance.
- Ensure that DOE diversity goals are met through adequate outreach efforts for membership. Board membership should reflect a diverse cross-section of those directly affected by and interested in the community from which the Board draws its members. **FACA § 5(b)(2); Manual § IV3.a; EMSSAB Charter § 11**
- Provide adequate resources to enable the Board to carry out its functions as written in the **FACA § 5 (b), 12 (b); CFR § 102-3.95(a); Charter §§ 7; Manual § I.6.h**

**To enhance compliance with FACA, CFR, and DOE policy, EM directs:**

- Ensure that member appointment packages are submitted to EM Headquarters with a recommendation for the Assistant Secretary's approval. Assistant Secretary approval of new and reappointed members is required, with the exception that the DDFO can appoint members to fill an unexpired term.
- Provide timely response to Board recommendations.
- Review and, if satisfactory, approve local Board bylaws and/or operating procedures to ensure that they are in compliance with FACA and other regulations and requirements.
- Review and approve local annual work plans.
- Review and approve EM SSAB budget requests and incorporate, as appropriate, into the EM budget development process.
- Coordinate with DOE Headquarters on EM SSAB issues and processes.



## ***II.c. Designated Federal Officer (DFO)/Deputy Designated Federal Officer (DDFO)/Federal Coordinator***

Under **FACA § 10(e) and CFR § 102-3.120**, each Federal advisory committee is required to have a DFO, in this case a DOE employee, who works closely with the Board. The DFO for the EM SSAB is located in the Office of Public and Intergovernmental Accountability (EM-10). The DFO delegates to local DOE employees the responsibility to serve as onsite DDFOs.

### **FACA and Title 41 Code of Federal Regulations (CFR) require:**

- Approve or call the meetings, and attend Board meetings. **FACA § 10(e)&(f), CFR § 102-3.120(a)&(c)**
- Can adjourn Board meetings if it is in the public interest. **FACA § 10(e), CFR § 102-3.120(d)**
- Approve agendas. **FACA § 10(f), CFR § 102-3.120(b)**
- Chair the meeting. **FACA § 10(e), CFR § 102-3.120(e)**
- Ensure required records on Board costs and membership are maintained, as each agency needs to keep records that will fully disclose the disposition of any funds at the disposal of the Board. **FACA § 7(b)&(c), 12(a); CFR § 102-3.175(b)**
- Ensure that detailed minutes of meetings, containing items specified in **CFR § 102-3.165**, are prepared and duly certified. **FACA § 10(c), CFR § 102-3.165**

### **The Manual requires:**

- Ensure that conflict of interest regulations are followed. **Manual § IV.6**
- Arrange for preparing reimbursement of travel expenses as necessary. **Manual § V.6.a.(2).f**
- Assure that each Board meeting is held at a reasonable time and in a manner or place reasonably accessible to the public. **Manual § V.3 & 6.a.(2)**

### **To enhance compliance with FACA, CFR, and DOE policy, EM directs:**

- Encourage the Board to listen carefully to all points of view and to work toward consensus.
- Provide timely information for Federal Register notices to the DFO, and broad local notification about EM SSAB meetings and activities, e.g., in the local media, public reading rooms, and public libraries.
- Ensure that the local boards have the opportunity to offer advice and recommendations on the charges issued by EM. To support this, it is recommended that the DDFO:
  - Ensure that EM's decision-making process is clearly communicated.
  - Inform the local boards of EM programs, projects, and activities directly affecting the Board's mission and purpose.
  - Work closely and cooperatively with the Board to prioritize issues.
  - Approve the annual work plan that includes goals and priorities

In addition, the DDFO can appoint a Federal Coordinator to assist him/her in the management of the EM SSAB and in supporting the activities mentioned above.

### **III. Operating a Local Site-Specific Advisory Board**

#### ***III.a. Public Participation and Record-Keeping***

##### ***III.a.1. Public Participation***

**FACA and Title 41 Code of Federal Regulations (CFR) require:**

- Each advisory committee meeting shall be open to the public. **FACA § 10(a)(1)** Although subject matter may indicate the need to close a meeting (e.g., for security considerations), **FACA § 10(d)** requires the head of the agency to which the committee reports to approve, in writing, closed sessions of full committees. **CFR § 102-3.155** The Secretary of Energy has delegated this authority to the Assistant Secretary of EM.
- Timely notice of each meeting shall be published in the *Federal Register*. **FACA § 10(a)(2)**
- Each meeting shall be held at a reasonable time and in a manner or place reasonably accessible to the public, and to include facilities that are readily accessible to and usable by persons with disabilities. **CFR § 102-3.140(a)**
- Any member of the public shall be permitted to file a written statement with the committee. **CFR § 102-3.140(c)**
- Any member of the public shall be permitted to speak. **FACA § 10(a)(3); CFR § 102-3.140(d); Manual § V.3.a.(2).(b)**
- Any meeting conducted in whole or part by teleconference, videoconference, the Internet or other electronic medium must meet the requirements of 41CFR Subpart D. **CFR § 102-3.140(e)**
- Subcommittees of the local boards are not required to comply with the provisions of FACA so long as the local Board deliberates on any recommendations before they are approved. **CFR § 102-3.35 and 102-3.145**

**The Manual requires:**

- Media representatives attending and reporting on open committee meetings are at liberty to use tape recorders, cameras, and electronic equipment for broadcast purposes. The use of such equipment must not interfere with the orderly conduct of the meeting. To preclude any disruption, news media personnel should be encouraged to position all equipment before the meeting and to defer removal until the meeting is adjourned or any ample intermission period. **Manual § V.3.b.**

#### ***Public Notification***

**FACA and Title 41 Code of Federal Regulations (CFR) require:**

- In accordance with **FACA § 10(a)(2) and CFR § 3.150(a)**, a notice of the meeting appear in the *Federal Register* at least 15 calendar days prior to a meeting of the local EM SSAB and must include:
  - Name of the advisory board, date, time, and place of the meeting;
  - The purpose of the meeting and a summary of the meeting agenda;

- A statement whether all or part of the meeting is closed; and
- The name, address, and phone numbers of the DDFO or another contact for a citizen who may wish to make a statement to the Board;
- All meetings shall have the advance approval and be attended by the DDFO or his/her designee. **FACA § 10(e)&(f); CFR § 102-3.120(a)&(c)**

**The Manual requires:**

- Local DOE Operations, Field, or Area Offices must ensure that *Federal Register* notices are sent to EM-13 at least 30 calendar days in advance. **Manual § V.3.c**

**To enhance compliance with FACA, CFR and DOE policy, EM directs:**

- *Federal Register* notices should also include the locations where meeting minutes will be made available to the public, an individual to contact to acquire copies of the minutes, and information on the public comment period.

### ***III.a.3. Minutes and Records***

**FACA and Title 41 Code of Federal Regulations (CFR) require:**

- Detailed minutes of each advisory committee meeting shall be kept. **FACA §10(c), CFR 102-3.165**

Minutes must include:

- Name of the board
- Meeting time, date, and place
- A list of meeting attendees including members of the public presenting oral and/or written statements, and estimated number of other public present
- An accurate description of each matter discussed and the resolution, if any, made by the board
- Copies of all reports received, issued, and approved by the committee
- Copies of each recommendation drafted or approved by the board.
- The DDFO must certify the meeting minutes within 90 calendar days. **CFR 102-3.165**
- The board and the Field office must maintain in a single location, copies of records, reports, minutes, transcripts, memoranda, drafts, working papers, and other documents for public inspection. **FACA §10(b); CFR §102-3.170**
- The Field office and the DDFO must keep records to fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. **FACA § 12(a); CFR §102-3.175(b)**

The multi-site structure of the EM SSAB necessitates that fiscal records be developed and maintained at local sites.

- Ten copies of each annual report are to be sent to the Deputy Committee Management Officer at U.S. DOE, 1000 Independence Avenue, S.W., MA-7, Room 7E-028, Washington, DC 20585. The Deputy CMO will forward eight copies of the annual reports to the Library of Congress. **CFR §102-3.175(d)**

**The Manual requires:**

- The minutes must include names of any member who may have recused themselves from a meeting or a portion of it and their reason for doing so. **Manual § V.5.a.(2)**
- Two copies of Board minutes are sent to the Deputy Committee Management Officer at U.S. DOE, 1000 Independence Avenue, S.W., MA-7, Room 7E-028, Washington, DC 20585 within 60 days after the meeting. **Manual § V.5.d**

**To enhance compliance with FACA, CFR and DOE policy, EM directs:**

- Copies of each recommendation drafted or approved by the EM SSAB are kept in a single location with all other EM SSAB documents.
- One copy of all local board reports, minutes, transcripts (where applicable), recommendations and responses, self-evaluations, and EM SSAB work plans are forwarded by the DDFO or local SSAB Federal Coordinator to the local reading room or other appropriate information resource center(s).
- One copy of EM SSAB recommendations and of the EM responses are sent to the DFO at DOE Headquarters.
- One copy of minutes, annual reports, self-evaluations, and work plans are sent to the EM SSAB Administrator at DOE Headquarters (EM-13) for files.
- One copy of all material is sent to the U.S. Department of Energy, Freedom of Information Public Reading Room, 1000 Independence Avenue, S.W., Room 1E-190, Washington, DC 20585 for public use.

***III.a.4 SSAB Annual Report to Headquarters***

The DFO is required each year to provide to the EM Assistant Secretary an Annual Report on the activities of the EM SSAB during the preceding fiscal year. **Manual VII.3(b)**. Accordingly, local EM SSAB DDFOs and Administrators must submit each Board's data to the DFO within one month of the close of each fiscal year.

**FACA and Title 41 Code of Federal Regulations (CFR) require:**

- An informational report to the Department of Energy. **CFR §102-3.175(b)**. Report includes:
  - Activities, status, and changes in composition during the year
  - Dates of meetings and names and occupations of its members
  - Estimated annual cost to DOE to fund, service, and supply the EM SSAB
  - Reports submitted by the EM SSAB

**The Manual requires:**

- The CMO will issue instructions to the DFO regarding reporting requirements, procedures, and submission dates. The CMO will then be responsible for coordinating the annual report. **Manual § VII.3.b.2**
- The DFO, and subsequently the DDFO, is responsible for accurately and completely filling out individual committee reports by the due date assigned by the CMO. **Manual § VII.3.b.2**

**To enhance compliance with FACA, CFR and DOE policy, EM directs:**

**The following data must be included in the annual report:**

- Data from the previous fiscal year required includes:
  - Total number of reports (including annual reports, recommendation reports, letter reports, etc), the titles of each report or recommendation, and month/day/year they were generated;
  - Total number of meetings held;
  - Names of board members (including current members and those who served on the board at any time during the year, but are no longer there);
  - Federal support years (number of full-time employees that work on SSAB issues throughout the fiscal year – i.e., if persons spent half of their working time on SSAB issues, they would count as 0.5 full-time employees, whereas if persons spent all their time on SSAB issues they would count as full-time employees).
- Data required from both the previous fiscal year and the next year's projections includes:
  - Personnel payments to non-Federal members (total dollar amount);
  - Personnel payments to Federal members;
  - Personnel payments to Federal staff;
  - Personnel payments to non-member consultants;
  - Travel and per diem to non-Federal members;
  - Travel and per diem to Federal members;
  - Travel and per diem to Federal staff; - Travel and per diem to non-member consultants;
  - Other (rent, user charges, graphics printing, mail, etc);
  - Total dollar amount of all costs.
- In the Annual Report budgetary information request, clearly identify contractor employees in calculations.
- Annual Report information on the impact the Board has had on DOE activities during the past fiscal year is required (e.g., the Hanford Advisory Board recommended that the Department reduce indirect costs, saving more than \$200 million; the Nevada CAB supported the decision to apply for a RCRA Part B permit that will enable the site to accept mixed low-level waste from throughout the DOE complex).

### ***III.b. Board Recommendations and DOE Responses***

FACA, the CFR, and the DOE Manual do not provide specific parameters for Board recommendations or DOE responses. The CFR does suggest that EM continually seek feedback from the Board members and the public regarding the effectiveness of the Board's activities. At regular intervals, EM should communicate to the Board members how their advice has affected DOE programs and decision-making. **CFR § 102-3.95(e)**

**To enhance compliance with FACA, CFR, and DOE policy, EM directs:**

In general, and in a timely fashion, DOE Field offices should reply to site-specific recommendations. The Assistant Secretary for EM is responsible for replying to recommendations regarding cross-site or national issues. When appropriate, responses

should be in writing. A copy of any recommendation and response should be sent to the Office of Public and Intergovernmental Accountability (EM-13).

DOE written responses should include the following:

- A clear statement of acceptance or rejection of the recommendation, in whole or in part;
- If the recommendation is accepted in whole or in part, a statement about how the changes will be implemented and in what time frame;
- If the recommendation is rejected in whole or in part, a substantive reason for the decision, as well as possible alternatives for addressing the concerns or issues raised in the recommendation; and
- If unresolved issues still remain, DOE should indicate this in written correspondence to the local EM SSAB with the goal of establishing (or continuing) a near-term mutual dialogue to work through area(s) of disagreement.

### ***III.c. Membership III.c.1. SSAB Membership Composition***

It is DOE policy that the Board membership provides for ethnic and gender diversity (Secretarial Memo dated 11/98 requires ensuring adequate diversity on Department advisory boards). In this regard, Boards must make vigorous outreach efforts and be able to demonstrate that they have attempted to recruit members from all segments of their communities. In order to comply with both FACA and Departmental policies regarding balance and diversity requirements of advisory committees, the DOE Offices of EM; Management, Budget and Evaluation (ME); and General Counsel (GC) closely scrutinize Board membership.

#### **FACA and Title 41 Code of Federal Regulations (CFR) require:**

- The Board must be “fairly balanced in terms of the points of view represented and functions to be performed.” **FACA § 5(b)(2)**

#### **The Manual requires:**

- Accordingly, to the extent possible, Board membership should reflect a representative diversity of viewpoints in the affected community and region and include primarily people who are directly affected by DOE site cleanup activities. **Manual § IV. 3**
  - Officials from DOE, the Environmental Protection Agency, and state governments may serve as liaisons to the local Boards. On some Boards, members from Tribal Nations and local governments have chosen to serve as liaisons. Liaisons may attend and participate in Board meetings, but do not have voting privileges.
  - In selecting membership nominees, attention must be given to the conflict of interest considerations discussed in *Section IV of the Guidance*. Pursuant to DOE policy, employees of DOE contractors may be appointed only when necessary to achieve balance or diversity on a local Board, or to contribute adequate technical knowledge of site operations. Such individuals must receive a written waiver from the DOE Advisory Committee Management Officer. **Manual § IV. 3.b**

**To enhance compliance with FACA, CFR and DOE policy, EM prefers that:**

- Statistics from the U.S. Census Bureau may serve as guidance for comparing Board membership with gender and ethnic diversity in the corresponding community, but statistics will not justify failure to make adequate outreach efforts.
- Board members are typically drawn from stakeholder groups and organizations, including but not limited to:
  - Local governments
  - Tribal governments
  - Environmental organizations
  - Labor organizations
  - Universities and colleges (including minority institutions)
  - Tribal, Hispanic and other Minority organizations
  - Women's groups
  - Business groups
  - Civic/religious groups
- Federal, state, Tribal and local government officials are encouraged to recommend prospective members for the local EM SSAB to EM.
- Selection and appointment of committee members shall be accomplished using procedures designed to ensure a diverse Board membership and a balance of representative viewpoints.

***III.c.2. Member Appointment***

**FACA and Title 41 Code of Federal Regulations (CFR) require:**

- According to the CFR, membership terms are at the sole discretion of the appointing or inviting authority. **CFR § 102-3.130(a)**

**The Manual requires:**

- Appointments should be staggered so that at least one-third of the membership is retained for continuity. **Manual § IV.2.e.1**
- The Office of General Counsel and CMO will review nominations to the Board to ensure compliance with FACA requirements, as well as GSA and Departmental requirements. **Manual § I.6.g, IV.2.b**
- Sites must include the following information in their member appointment packages (see **Manual § IV. 5** and see Exhibits for further information):
  - Memorandum from Operations Office Manager to the Assistant Secretary for EM recommending the nominees for membership;
  - A copy of the current Charter;
  - Biographies for all proposed and continuing members, including staff members;
  - Names, phone and fax numbers, and mailing and email addresses of all proposed members (i.e., new appointments, reappointments and continuing members);
  - Names and companies of contractors or federal employees requiring letters of exception to serve on the Board;
  - Outreach efforts conducted to attract new members in the current membership drive (attach copies of letters sent, press releases, radio advertisements, newspaper advertisements, etc);

- Completed membership criteria matrices for proposed and current members;
- A brief account of the local SSAB history; and
- Letters of invitation to each member for signature by the Assistant Secretary.
- The Secretary of Energy has delegated authority for EM SSAB member appointments and reappointments to the Assistant Secretary for EM, who has delegated limited authority to the Field offices. This includes initial appointments for positions established in the local EM SSAB bylaws or operating procedures, but which, to date, remain unfilled. **Manual § IV.2.a**
- Appointments and reappointments require concurrence from the Office of Public and Intergovernmental Accountability, the Office of General Counsel, and the Office of the Executive Secretariat (Committee Management Officer). **Manual § IV.5.b.2**
- DOE retains ultimate appointment and removal authority. **Manual § IV.2.g**

**To enhance compliance with FACA, CFR and DOE policy, EM directs:**

- DOE Operations, Field, or Area Offices should provide an information package, no fewer than ten weeks in advance of the desired appointment date for new appointments or reappointments, in both electronic and hard copy. An electronic copy should be submitted to the Director of the Office of Public and Intergovernmental Accountability. The hard copy should go to the Assistant Secretary for EM. It is critical that sites submit packages in sufficient time for DOE Headquarters to conduct its review and concurrence process. (See Appendices of Guidance for more specifics.)
- The DFO shall oversee the production of all other aspects of the membership package.

***III.c.3. Delegated Authority to the Field for EM SSAB Member Appointment***

**To enhance compliance with FACA, CFR and DOE policy, the Assistant Secretary for EM has delegated limited authority to appoint new EM SSAB members to the DOE Operations, Field and Area Offices.**

- The Field can replace members who have resigned with time remaining in their membership terms under the following terms and conditions:
  - The appointments can be made *only* for the remainder of the previous member's term;
  - No more than 20% of members can be appointed by the sites in any given calendar year; and
  - When appointing new members under this delegated authority, DOE Operations, Field and Area Office managers must comply with FACA, GSA and DOE regulations, including appropriate conflict of interest restrictions.
- The Office of Public and Intergovernmental Accountability (EM-13) must be advised of all such appointments, and all relevant information must be sent (i.e., name, contact information, biography, and matrix information).

***III.c.4. Removal and Resignation of SSAB Members***

Consistent with local EM SSAB model language for operating procedures, DOE Operations, Field, and Area Offices may recommend to DOE Headquarters (EM-13) that



local Board members be removed from the SSAB as deemed necessary in order to carry out the mission of the EM SSAB (e.g., missing three consecutive Board meetings or having three unexcused absences in a given calendar year). As previously mentioned, members serve at the pleasure of the Assistant Secretary for EM.

**To enhance compliance with FACA, CFR and DOE policy, EM directs:**

- Members who wish to resign from the Board are requested to submit a letter to the Assistant Secretary for EM, with copies to the DDFO, the local EM SSAB Chair, and the Office of Public and Intergovernmental Accountability (EM-13).

***III.d. Outreach***

**To enhance compliance with FACA, CFR and DOE policy, EM directs:**

- Field office staff should ensure that the community is aware of and engaged in Board activities.
- EM SSAB DDFOs and Federal Coordinators should ensure that Board outreach activities are appropriately coordinated with other Field office public involvement activities.
- Field offices may provide supplemental resources for local Boards to establish and maintain their outreach activities.
- As discussed above, the Board should be reflective of the gender, minority and ethnic diversity in the community from which the Board draws its members. Outreach efforts should be targeted to achieve such diversity.
- Outreach efforts may include, but are not limited to: targeted mailings, notices in newsletters, press releases advertisements in local and regional papers, advertisements on websites, and radio and television advertisements.

## **Conflict of Interest**

Appointing or reappointing local Board members, such as DOE management and operating contractor employees, who reasonably may be expected to have a potential conflict of interest regarding certain issues that might be considered by the Board, is permissible when necessary to achieve balance or diversity on a local Board, or to contribute adequate technical knowledge of site operations. In the event of such an appointment, the Advisory Committee Management Officer must sign a letter of exception allowing this individual to serve on the Board. A statement that thoroughly describes the individual's potential conflict of interest and explains why this individual's appointment is deemed essential must be included in the memorandum from the Operations Office manager to the CMO in the Board's membership package.

If such a member is appointed, the local site DDFO is required to take special care to ensure that the appointment of this member will not result in a conflict of interest or appearance of such conflict which can lead to actual bias, or perception of possible bias, in the review of DOE activities or projects. This individual will be informed of the general conflict of interest provisions and asked to disclose the potential or actual conflict of interest and recuse him/herself from voting on issues that would have a direct and predictable effect on his/her employing organization, represented group (s) or other entities with which he/she is associated or in which he/she has a financial, professional, or private interest or will receive either tangible or intangible benefits. All members should advise the local Board chair and the DDFO of a potential or actual conflict in advance of any discussion of such a topic and, at the time of the discussion, make their potential or actual conflict of interest a matter of record. In the event of a potential or actual conflict of interest, a statement is required to be included in the local site Board minutes detailing the conflict, and the action taken to remove it. In the case of a potential or actual conflict of interest arising during a subcommittee meeting, the individual with the conflict will report it to the subcommittee chair, who will report it to the DDFO.

The Assistant General Counsel for General Law reviews new member qualifications for conflict-of-interest issues and the Field General Counsel handles mid-term replacements (Section III.c.3 of the Guidance). If a proposed mid-term appointment exhibits a potential conflict or conflict of interest, the local DDFO must provide the Field General Counsel with any relevant materials and consult with EM-13 and the Office of the Assistant General Counsel for General Law if necessary.

All Board members must adhere to the following general conflict of interest requirements:

- (1) A member shall refrain from any use of his or her membership, which is, or gives the appearance of being, motivated by the desire for private, professional, or financial gain;
- (2) A member shall not use either directly or indirectly for private or professional gain for him/herself or for his/her represented group any inside information obtained as a result of advisory committee service;
- (3) A member shall not use his or her position in any way to coerce or give the appearance of coercing another individual to provide a financial benefit to the member

with the conflict of interest or any person with whom that member has family, business, or financial relationships;

(4) A member shall recuse him or herself from decisions and discussions related to real or perceived conflicts of interest, act impartially, and avoid the appearance of impropriety;

(5) A member shall not create situations that may result in conflicts of interest or questions regarding the objectivity and credibility of the Board process; and

(6) A member should seek immediate guidance, beginning with the local DDFO, if he or she is offered anything of value such as a gift, gratuity, loan, or favor in connection with advisory committee service.

In addition, for the potential conflict of interest situation where a Board member is a party in a legal action against the Department, or where a Board member is a member of an organization that is a party in a legal action, the individual's continued membership on the Board will be considered by the DFO on a case by case basis, in consultation with both the Office of General Counsel at DOE Headquarters and the Office of Chief Counsel at the DOE Operations, Field, or Site Office.

#### ***IV. Funding and Other Support***

In 1997, funding of the local EM SSABs became the responsibility of the DOE Operations, Field, and Area Offices. Accordingly, DOE Field office managers provide adequate funding to local SSABs to enable them to operate efficiently and effectively.

##### **FACA and Title 41 Code of Federal Regulations (CFR) require:**

- DOE provide adequate support services as necessary. **FACA § 5(b)(5) & 5(c), 12(b); CFR § 102-3.95(a)**

##### **To enhance compliance with FACA, CFR and DOE policy, EM directs:**

- That to ensure proper stewardship of this stakeholder activity and to increase accountability and visibility of resources provided and subsequently used, EM SSAB procurement mechanisms will be structured and managed to eliminate prime contractor support. The three options for funding administrative support for the EM SSABs are:

- Non-Profit Organization (Section 501(c) of the IRS Code)
- Direct DOE Federal Management and Support
- Support Services Contract with a Section 8(a) Small Business

##### **To enhance compliance with FACA, CFR and DOE policy, EM directs:**

- Adequate support services include, but are not limited to:
  - Office space;
  - Necessary supplies and equipment;
  - Federal staff support;
  - Coordination of meetings and agendas;
  - Coaching for members and presenters;
  - Support monitoring emerging issues and activities;

-Funding for an independent facilitator if necessary to ensure that Board members set and reach objectives, maintain focus, work as a team, strive for consensus, and operate at maximum efficiency; and

-Funding for independent technical reviews of key issues or provide ongoing technical assistance to the Board. However, Field offices should ensure that technical assistance funding is used to complement, rather than duplicate, the technical programs of DOE and its regulating agencies.

- Field office managers, through the DDFO and Federal Coordinator, must work closely and cooperatively with their local EM SSAB to develop a budget that is consistent with the Board’s mission, scope, and annual work plan.
- After the work plan is approved by the DDFO, the DOE Operations, Field or Area Office should provide sufficient funding to carry out the work plan.
- Field managers should report the level of funding, including technical assistance funding, to the Office of Public and Intergovernmental Accountability (EM-13) in the form of an Annual Report of all EM SSAB activities at the end of each fiscal year.

## ***VI. Compensation and Travel Expenses***

### ***VI.a. Board Service Is Not Compensable***

Although the DOE **Manual § IV. 4.d** provides that some members serving on advisory committees may be compensated for government service, individuals serving on the EM SSAB are not eligible for compensation. Individuals who serve on the EM SSAB are appointed on the basis of their ability to represent local interests and concerns, physical proximity to the site, and ability to donate adequate time to Board activities. Members may also be representatives from local governmental; tribal nations; environmental, civic, and religious groups; labor organizations; and academia. EM SSAB members serve in a representational capacity and as such, are not eligible for compensation.

### ***VI.b. Travel Reimbursements***

FACA and the CFR provide that advisory committee members, while engaged in the performance of their duties away from their homes or regular places of business, “may be allowed travel expenses, including per diem in lieu of subsistence” to the same extent that is allowed for Federal employees. **FACA § 7(d)(1)(B); CFR 102-3.130(k)**. Moreover, the payment of additional travel expenses which are necessary to provide reasonable accommodation for a Board member with a disability or special physical need may be authorized, provided that the member’s disability or special physical need is clearly visible and discernible or substantiated in writing by a competent medical authority, in accordance with Federal Travel Regulations. **41CFR § 301-13.2; CFR § 102-3.130(l)**

#### **The Manual requires:**

- Coverage: Members will be reimbursed for travel expenses and per diem only when they are on committee business while away from their residence or regular places of business. **Manual § VI.3.a**

- Tickets: Generally, DOE will provide members with a Government fare common carrier ticket. If DOE is unable to provide a member with a common carrier ticket, the member may use personal means to purchase transportation, but when costs exceed \$100, a senior DOE official is required to review the circumstances of the purchase before reimbursement, which may not exceed the Government-authorized fare. **Manual § VI. 3.b**
- Major travel to and from meetings: Airfare is limited to the regular, round trip, coach-class fare or when available, Government contract airlines between the member's residence or regular place of business and the meeting site. Train travel is authorized when it is advantageous to the Government. A member may also travel to and from the meeting in his/her private vehicle and DOE will reimburse the member at the mileage allowance rate and for fees. **Manual § VI. 3.c**
- DOE will reimburse members for lodging, meals, and incidental subsistence expenses associated with travel for meetings using a per diem allowance. **Manual § VI. 3.e**

**To enhance compliance with FACA, CFR and DOE policy, EM directs:**

- Members with questions on travel requirements or reimbursements should consult with the local Field office prior to commencing travel or completing the reimbursement voucher.
- In addition, DDFOs and Federal Coordinators are responsible for determining, after consultation with appropriate offices and/or individual at their Field sites, whether it is appropriate to fund official travel for non-members to specific EM SSAB-related activities; and if so, how it should be funded.
- Funding and compensation for travel is considered part of the annual budget allocation for the Board.

## ***VII. Evaluation and Team Building***

**To enhance compliance with FACA, CFR and DOE policy, EM recommends:**

- DOE Field offices assist the Office of Public and Intergovernmental Accountability (EM-13) in conducting periodic evaluations or reviews of local EM SSAB boards for the purpose of assessing overall Board effectiveness. These evaluations or assessments may consist of:
  - A formal survey of selected individuals, including Board members, liaisons, and members of the general public;
  - Site visits and discussions with local EM SSAB members and others;
  - A review of recommendations, reports and meeting minutes submitted by local site boards; and/or
  - A more systematic, qualitative and quantitative assessment.
- In addition, toward the end of each fiscal year, local Boards are requested to conduct a self-evaluation (either formal or informal) of their operations and progress made during the previous year with the aim of improving the Board's overall effectiveness.

## ***VIII. Board Termination***

### **FACA and Title 41 Code of Federal Regulations (CFR) require:**

- All local Boards operate under the EM SSAB Charter, which is renewed biennially. If that charter is not renewed, all SSABs will terminate automatically. **FACA § 14, CFR § 102-3.55(a)**
- In accordance with 41CFR **102-3.30(b)**, a local Board must be terminated when:
  - The stated objectives of the Board have been accomplished;
  - The subject matter of work of the Board has become obsolete by the passing of time or the assumption of the Board's functions by another entity; and/or
  - DOE determines that the cost of operation is excessive in relation to the benefits accruing to the federal Government.

### **The Manual requires:**

- That criteria for termination include the criteria in FACA and the CFR. Decision to terminate a committee may include a determination that the advice of the Board is no longer essential to EM or the Board is no longer in the public interest, the committee has been staffed for one year, or the committee have not met for a two year period. **Manual § III.8.a**
- After a decision to terminate the Board is made, the Field office manager should send a memorandum to the Assistant Secretary requesting that the Assistant Secretary terminate the Board. The memorandum should note the reasons for the Board's suggested termination, as well as its accomplishments over the years.
- Letters of appreciation from the Assistant Secretary to the Board members for services rendered must be included in the termination package. **Manual § III.8.b.1**

### **To enhance compliance with FACA, CFR and DOE policy, EM directs:**

- Once the EM mission is completed at a site where there is a local board under the EM SSAB Charter, the Board will be terminated upon physical and/or regulatory closure.
- If the chartered purpose for a local Board cannot be fulfilled, the DDFO, in consultation with DOE Headquarters and members of the local EM SSAB, will begin establishing a timetable for disestablishing the local Board. The resulting termination package will be sent through the same concurrence chain as a member appointment package.

## ***IX. Acronyms & Definitions***

**ACMO** Advisory Committee Management Officer, identical to CMO, below

**CAB** Citizen Advisory Board

**CFR** Code of Federal Regulations

**CMO** Committee Management Officer

**DDFO** Deputy Designated Federal Official

**DFO** Designated Federal Official

**DOE** U.S. Department of Energy

**EM** Office of Environmental Management

**EM SSAB** Environmental Management Site-Specific Advisory Board

**EM-10** Office of Regulatory Compliance

**EM-13** Office of Public and Intergovernmental Accountability

**EPA** Environmental Protection Agency

**FACA** Federal Advisory Committee Act

**FTR** Federal Travel Regulations

**GC** General Counsel

**GSA** General Services Administration

**LPSO** Lead Program Secretarial Officer

**ME/CFO** Office of Management, Budget & Evaluation/ Chief Financial Officer

**NNSA** National Nuclear Security Administration

**MA** Office of Management and Administration

**OMB** Office of Management and Budget

**SC** Office of Science

**Advisory Committee:** Any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, which is established by statute, the President, or by one or more agencies in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government. **FACA § 3(2)**

**EM SSAB Charter:** The governing document for the EM SSAB, including all local boards, which is renewed biannually and approved by the Committee Management Officer (MA-70).

**Liaisons:** The representatives of state and other federal agencies who attend advisory board meetings and participate actively in advisory board discussions. However, because the advice from the advisory boards will be directed at their agencies, liaisons must not take part in final decisions or have any vote concerning recommendations.

**Field:** Area, Site and Field Offices

**Manual:** “Advisory Committee Management Program” Manual, DOE M 510.1-1, 9/30/96

**Site & Facility Management (SFM) Contractor:** Any contractor performing under a management and operating contract, a management and integration contract, or an environmental restoration management contract awarded by a DOE Contracting Officer. Further, the contractor is directly responsible for federal property including equipment, structures, systems, processes or activities at the site.

## ***X. Applicable Law, Regulations, Orders and Policy***

**Statutes:** Federal Advisory Committee Act (FACA), 5 U.S.C.A. App. II § 1 – 15 (1997) (original version at Pub. L. No. 92-463, 86 Stat. 770 (1972))

<http://www.fda.gov/opacom/laws/fedadvca.htm>

**Regulations:** Federal Advisory Committee Management, 41 CFR § 102-3 et seq. See also: 52 Fed. Reg. 45926 (1987).

[http://www.access.gpo.gov/nara/cfr/waisidx\\_99/41cfr105-54\\_99.html](http://www.access.gpo.gov/nara/cfr/waisidx_99/41cfr105-54_99.html)

**Specific Agency Regulations:** Office of Human Resources and Administration, U.S. Department of Energy (DOE), Pub. No. DOE M 510.1-1, *Advisory Committee Management Program* (1996) (Manual). <http://www.directives.doe.gov/cgi-bin/explhcgi?qry1780413015;doe-278>

**Charter:** Office of Environmental Management, Office of Intergovernmental and Public Accountability, U.S. Department of Energy Amended Charter: Environmental Management Site Specific Advisory Board (2006).

<http://web.em.doe.gov/public/ssab/charter.html>

**Orders:** Department of Energy Delegation Order No. 002.00A to the Under Secretary for Energy, Science and Environment (September 12, 2002). Department of Energy Redlegation Order No. 00-002.03 to the Assistant Secretary for Environmental Management (January 8, 2002). **Policy:** Department of Energy Public Participation and Community Relations Policy (DOE P 141.2) (May 2, 2003)

<http://www.directives.doe.gov/pdfs/doe/doetext/neword/141/p1412.pdf>

**Memoranda:** OMB Memorandum for Heads of Executive Departments and Agencies, "Management of Federal Advisory Committees." (June 23, 1994). Vice Presidential Memorandum to Heads Of Executive Departments and Agencies (June 28, 1994). Memorandum from William Richardson, Secretary of Energy, entitled, "Membership of Departmental Advisory Committees" (November 6, 1998). Memorandum from James M. Owendoff, Acting Assistant Secretary for Environmental Management, U.S. Department of Energy, entitled, "Environmental Management Site-Specific Advisory Board" (March 5, 1998). Memorandum from Martha Crosland, Acting Director for the Office of Intergovernmental and Public Accountability, U.S. Department of Energy, entitled, "Authority to Appoint EM Site-Specific Advisory Board (SSAB) Members" (February 3, 1999).



## **LIST OF EXHIBITS**

1. Sample letter to the Assistant Secretary nominating members for the EM SSAB
2. Sample Member Biographies which include the following:
  - a) Full name
  - b) Current Occupation or retired from last occupation
  - c) Past positions, especially any that might pose a conflict of interest
  - d) Relevant work experience
  - e) Current County/City/Tribal Government participation, University/Black Colleges/Academia/Education, Minority Organizations, Labor Organizations, Civic Groups, Environmental Groups, Women's Groups, Business Groups or other volunteer organizations and past (if relevant) positions within the said organizations, especially any that might pose a conflict of interest
  - f) Education background and all degrees attained, including current enrollment
  - g) Where the nominee currently lives (city, state, county)
  - h) What position, if any, the nominee holds in the CAB

*Additional instructions on the above:*

1. List New Appointments with one \*asterisk
2. List Reappointments with two \*\*asterisks

3. Sample Member List including the following:
  - a) Full Name
  - b) Full Mailing Address
  - c) Telephone Number (work and/or home)
  - d) Fax Number
  - e) Email Address

*Additional instructions on the above:*

1. List New Appointments with one \*asterisk
2. List Reappointments with two \*\*asterisks

4. Sample Membership Criteria Matrix
5. Sample Outreach/Recruitment Efforts